Supreme Court, U.S.
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No. 88-695

In The
Supreme Court of the United States
October Term, 1988

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CLIVE MILLER, a Member of the Morongo Band of Mission Indians,

Petitioner,

vs.

MORONGO BAND OF MISSION INDIANS,

Respondent.

—o—

PETITIONER'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The central question in this case is whether the Ninth Circuit erred in holding that the District Court lacked jurisdiction over respondent's interpleader action because, according to the Ninth Circuit, the action did not "arise under" federal law within the meaning of 28 U.S.C. § 1362.

Petitioner argued that Congress in enacting § 1362 intended to expand the scope of "arising under" jurisdiction in the District Court beyond what judicial interpretations of that language would have allowed under 28 U.S.C. § 1331, for suits brought by Indian tribes, and that respondent's interpleader action arose under federal law within the meaning of § 1362.

Respondent agrees that the Ninth Circuit construed § 1362 too narrowly, Respondent's Opposition 16, and it does not contend that the District Court lacked jurisdiction. Rather, respondent states, "even if the Ninth Circuit's construction or application of 28 U.S.C. § 1362 was completely wrong," the petition should be denied because, respondent claims, it would ultimately prevail on the merits. Respondent's Opposition, 17-20. The merits, of course, are not before this Court. If the District Court had jurisdiction over the action, this Court should remand the matter for further proceedings. Petitioner believes that on remand he will prevail on the merits.

The fundamental question, whether the "arising under" language of § 1362 is broader than the identical language found in § 1331, is important and should be resolved by this Court in this case.

Dated: November 29, 1988

Respectfully submitted,

DAVID M. LIBERMAN

Attorney for Petitioner